IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.81 of 2007
In
Arbitration Petition No.259 of 2006

Manojkumar Mishra. .. Appellant

Vs.

Aashish Devendra Mishra & Ors. .. Respondents

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Shri Shailesh Shah i/b Ashok Purohit for the Appellant.

Shri Y.R.Shah for Respondent No.1.

Shri Sanjay Jain i/b Lalit V.Jain for Respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 12TH MARCH, 2007

P.C.

1. Heard. This appeal arises from the order dated 20th September, 2006 passed by the learned Single Judge in the arbitration petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the appellant. The only ground on which the award was sought to be challenged was that the learned Arbitrator had excluded from his consideration certain

relevant documents. The learned Single Judge has held that though the said ground was sought to be canvassed in the course of argument, the same was not raised in the petition filed under Section 34 of the said Act. On that ground itself, the petition has been rejected.

2. Undoubtedly, while rejecting the petition, the learned Single Judge has also observed that the view taken by the learned Arbitrator is a possible view on the basis of the materials available on record.

3. Once the party choses to settle the matter by way of arbitration, the challenge, if any, to the award passed by the learned Arbitrator has to be specific in the petition under Section 34 of the said Act and the grounds of challenge must be specifically incorporated in such petition. The parties are not entitled to enlarge the scope of such challenge when the matter comes up for argument without there being any foundation in that regard in the petition under Section 34 of the said Act. Once it was found that the ground which was sought to be canvassed in the course of argument did not find any place in the petition filed under Section 34 by the appellant, no fault can be found in the impugned order rejecting such petition.

4. An attempt was made by the learned advocate for the appellant to draw our attention to Ground (f) in paragraph 17 to contend that there was a ground taken in that regard by the appellant. The Ground (f) of Paragraph 17, Page 22, reads thus:-

> "That the learned Arbitrator has failed to appreciate the correct facts and evidence before him and has nearly preceded unpresumptuous conjunctions and surmises."

The said ground relates to the analysis of the evidence and materials on record and does not relate to failure on the part of the learned Arbitrator to take note of any particular document as such. The assessment of the entire evidence as such is different from contending that the learned Arbitrator has failed to take note of any particular document by assessing the evidence. Once it is not in dispute that no specific ground was raised by the appellant in the petition under Section 34 of the said Act about failure on the part of the learned Arbitrator to take note of any particular document as such and the award was sought to be challenged only on the ground canvassed in the course of argument, no fault can be

found with the impugned order rejecting the petition under Section 34 of the said Act.

5. As no other grounds are canvassed in the matter, the appeal fails and is hereby rejected.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)